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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 27 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act; 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on February 10, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a geologist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Request for Evidence

In addition, counsel argues that "the Service did not afford [the petitioner] an opportunity to address any of the cited deficiencies whish is the usual custom taken by the Service in extraordinary ability." The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

> (ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.
>
> (iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

A review of the record reflects that the director adjudicated the petition based on the evidence submitted at the time the petition was filed. The director did not deny the petition because initial evidence was missing; rather the submitted evidence failed to establish eligibility for the benefit. We find that in denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii). Furthermore, 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii) provides for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. In this case, the director exercised his discretionary authority and denied the petition based on the evidence submitted by the petitioner not establishing eligibility for the benefit. For these reasons, we are not persuaded by counsel's argument that the director erred in his decision regarding this matter.

II. Law

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally

recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria

[1] Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on October 10, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a geologist. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3). [2]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

[2] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the following submitted documentation:

1. A certificate congratulating the petitioner for completing the training course,
2. A certificate congratulating the petitioner for Regular Certification in from an unidentified source on November 22, 2002;
3. A certificate reflecting the petitioner's completion of the
4. A certificate reflecting the petitioner's completion of the 8;
5. A certificate reflecting the petitioner's completion of from
6. A certificate reflecting the petitioner's completion of the ;
7. A certificate reflecting the petitioner's completion of from
8. A certificate reflecting the petitioner's completion of
9. A certificate reflecting the petitioner's completion of Computer Mapping School from
10. A certificate reflecting the petitioner's completion of the ;
11. A certificate reflecting the petitioner's completion of the 7 Habits of Highly Effective People from on an unidentified date;
12. A Recognition & Award Program (RAP) certificate for the petitioner's contribution in the
13. A RAP certificate for the petitioner's contribution of the ;
14. A RAP certificate for the petitioner's contribution for Using the Development Drilling CPDEP Process to Optimize the Development Plans for the
15. A RAP certificate for the petitioner's contribution for Planning, Designing and Completing the SideTrack of from
16. A RAP certificate for the petitioner's contribution for ' " from

In the director's decision, he concluded that "[t]he level of recognition and prestige associated with the awards received by the petitioner are insufficient to meet the criteria of lesser nationally or internationally-recognized prizes or awards." On appeal, counsel argues:

> Selection for these Company Awards is very competitive, and is based on performance and results that are "above and beyond the norm," in recognition of "outstanding efforts" and "superb efforts and achievements." A committee of cross functional managers conducts the selection process. Each award carried a monetary prize as well as Company recognition. The awards were presented at a bi-monthly meeting of earth scientists within The is comprised of approximately one hundred (100) earth scientists. The awards were presented by the RM Manager on behalf of the General Manager.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of *lesser nationally or internationally recognized prizes or awards for excellence* in the field of endeavor [emphasis added]." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish his prizes and awards are recognized nationally or internationally beyond the awarding entities.

Regarding items 1 - 11, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the prizes or awards to be "in the field of endeavor." However, academic study is not a field of endeavor, but training for a future field of endeavor. As such, attending and completing intercompany training courses and seminars cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Furthermore, this regulatory criterion requires the awards or prizes to be for "excellence." Although we find that the petitioner's documentation does not equate to prizes or awards, we are also not persuaded that simply attending a seminar or successfully completing a course is tantamount to a prize or award, let alone a prize or award for excellence in the field of endeavor.

Finally, regarding items 12 – 16, the regulation requires the petitioner's prizes or awards to be "nationally or internationally recognized." According to the screenshots from submitted by the petitioner, "[t]he R&A Program provides managers and co-workers with focused and real-time ways to recognize employee contributions to the

company's success." Based on the documentary evidence submitted by the petitioner, awards from R&A Program are corporate recognition rather than national or international recognition within the field of geology. The petitioner failed to establish that awards from R&A Program equate to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

As discussed, the plain language of this regulatory criterion specifically requires the petitioner to submit evidence of his nationally or internationally recognized awards or prizes for excellence in the field of endeavor, and it is his burden to establish every element of this criterion. In this case, there is insufficient evidence demonstrating that the petitioner received any nationally or internationally recognized prizes or awards for excellence in his field.

Accordingly, the petitioner failed to establish that he meets this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on his membership with the) and the). The director determined that the petitioner's memberships with these organizations failed to meet the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). On appeal, counsel argues:

> [The petitioner] asserts that a broader reading of this regulatory provision is necessary to satisfy statutory intent. The Service's narrow application – requiring that a petitioner identify and document specific, quantifiable achievement(s) that were requirements for membership – serves to exclude some fields of endeavor from meeting this criterion entirely, specifically those fields related to business.
>
> [The petitioner] has submitted expert testimony that membership in the [ ] – the world's largest professional geological society – requires: sponsorship by three members; possession of an advanced degree in geological science; three years practicing or teaching geology; and vetting by the Membership Committee as to credentials. Membership in thus qualifies for an organization that requires outstanding achievement and should be considered as meeting the membership criterion.

A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A membership card for reflecting that the petitioner has been an Associate Member since 2007.

2. A membership card for reflecting that the petitioner has been an Associate Member since September 12, 1984.
3. Screenshots from the website reflecting the following membership requirements for AAPG:

   Active Members – Any person engaged in the practice or teaching of geology may apply for Active membership, provided the applicant holds a Bachelor's, Master's or Doctor's Degree in geological science from a college of acceptable standards and, in addition, has had three (3) years of experience in the practice or teaching of geology. Credit for experience can be counted as follows: Master's Degree – one year; Doctor's Degree – two years. The Executive Committee may waive degree or current professional activity requirements if in its judgment an applicant has adequate professional experience and has attained standing in the profession.

   Associate Members – Any person not qualified for any other class of membership who is a graduate of a college of acceptable academic standards whose employment is associated with geology, may apply for election as an Associate. The Executive Committee may waive degree requirements, if in its judgment an applicant has adequate professional experience, and has attained professional standing.

4. A membership card for .
5. Screenshots from the website reflecting the following membership requirements for :

   Professional Member – Employment in work related to the petroleum industry and one of the following:

   a. A university degree equivalent to a four-year Bachelor's degree in engineering or basic sciences;
   b. A two-year science or engineering degree or a 4-year degree in a field other than science engineering; or
   c. Six years of active practice in support of petroleum engineering or the application of the petroleum industry.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." It is the petitioner's burden to establish every element of this criterion. Not only must the petitioner demonstrate membership with associations in the field, he must also establish that those associations require outstanding achievements of their members, as judged by recognized national or international experts. In

other words, a petitioner must show that the associations require outstanding achievements as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

For these reasons, we are not persuaded by counsel's argument that the director applied a "narrow application" to this criterion. Merely submitting documentary evidence reflecting the petitioner's membership is insufficient to establish eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Counsel further argues that the requirements for membership exclude some fields of endeavor. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Regardless, we are not persuaded that an alien in the field of geology could not meet the regulatory requirements of this criterion. The fact that an alien is simply unable to meet or submit documentary evidence for this criterion is insufficient to demonstrate that the criterion is not applicable to the field as a whole.

Regarding , we first note that even though both membership cards reflect the same membership number, one card reflects the petitioner's membership since 1984, and the other card reflects the petitioner's membership since 1997. We further note that both cards indicate that the petitioner is an Associate Member. While counsel argues on appeal that the membership requirements for require outstanding achievements, counsel described the membership requirements for Active Membership. The record clearly reflects that the petitioner is an Associate Member. Nonetheless, we are not persuaded that holding a college degree in geological science and having three years of experience is tantamount to outstanding achievements for Active membership, let alone having a college degree and whose employment is associated with geology for Associate Membership. Furthermore, the petitioner failed to establish that membership with is judged by national or international experts in the field.

Regarding , counsel did not address the petitioner's membership with on appeal. Similar to our reasoning for , we are not persuaded that employment in the petroleum industry and having a college degree or practical experience demonstrates outstanding achievements of its members. Moreover, the petitioner failed to establish that membership with is judged by national or international experts in the field.

While and narrow their membership by requiring education and experience, they fall far short from reflecting outstanding achievements of their members. In addition, the documentary evidence is insufficient to reflect that outstanding achievements of their members are judged by national or international experts in the field.

Accordingly, the petitioner failed to establish that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The director determined that although the petitioner submitted documentary evidence reflecting his participation as a judge of the work of others, the director determined that the petitioner failed to establish his sustained national or international acclaim. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Pursuant to *Kazarian*, 596 F.3d at 1121-22, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, or business-related contributions of a major significance in the field.*

The director concluded that the documentary evidence submitted by the petitioner failed to reflect original contributions of major significance outside of the [redacted] On appeal, counsel argues:

> Some of [the petitioner's] significant contributions relate to groundbreaking application of new computer software to oil and gas production. In 1993, [the petitioner] initiated the first ever use of [redacted] resulting in increased oil production of 3,000 barrels of oil per day. [redacted] is an external technology, not exclusive to [redacted] It was developed by [redacted]., and is not owned by [redacted] is now regarded as "[t]he E&P industry's most advanced surface mapping and modeling system"; however, at the time of [the petitioner's] successful application, the technology was relatively unknown. In 2001, over ten years after [the petitioner] first utilized [redacted], only approximately 100 scientists had utilized this software program.
>
> In 1997, [the petitioner] initiated the first ever successful application of [redacted] technology. [The petitioner's] use of [redacted] resulted in a 30% increase in oil production and field reserves of fifty (50) million barrels of oil. [redacted] technology was developed by [redacted] and is a proprietary technology. Based on his demonstrated expertise, [the petitioner] thereafter served as the [redacted] in-house expert and mentor from 1997 until 2005.

In addition, counsel refers to awards received by the petitioner as "evidence of multiple additional contributions for which informal acclaim was received, and has made significant

contributions to innovative capabilities." We have already considered the petitioner's awards under the regulation at 8 C.F.R. § 204.5(h)(3)(i) and will not presume that evidence relating to or even meeting the awards criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of "original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." The petitioner submitted brief overviews of and recommendation letters from individuals who have worked with or otherwise interacted with the petitioner. We cite representative examples here:

stated:

> [The petitioner] was the first to apply a new technology called to map the faults in the field and then construct a reservoir model that was used for Reservoir Simulation to determine remaining oil and also exploit the field.
>
> The new mapping as a result of this technology led to increase in the oil in place by 30%, and reserves in the field by about 50 million barrels.
>
> [The petitioner] then planned 3 new horizontal wells which were then drilled and produced at a combined rate of 30,000 barrels of oil per day when they were put on production. To date, this is the highest rate ever produced from a well in

stated:

> [The petitioner] has the potential to impact any projects he is part of. The work he has been involved in over the last several years has put him at the top of those working on which is one of the world leaders in the area. [The petitioner] will continue to add tremendous value and impact in energy development for the United States.

stated:

> [The petitioner's] work in Nigeria has made significant technical contributions to the success of in the following two areas:
>
> - Field re-development plans for

- Structural framework mapping for

The impact of his work in was to revitalize an aging resource and provide a platform for further economic development. His work on these fields led to the drilling of five (5) horizontal wells in and four (4) horizontal wells in The wells (combined) produced over 28,000 barrels of oil per day at their peak rates.

The impact of his framework mapping efforts, based on newly reprocessed seismic data created a better understanding of the structure and potential satellite prospects in this asset area. These areas formed the basis for further exploration and have become the focus of subsequent teams directed exploitation and development efforts, extending the economic value of these assets to

stated:

> [The petitioner] has demonstrated extraordinary abilities in development geology skills required for oil field development and exploitation. During my tenure with the Nigeria business unit, [the petitioner] did the geologic work to support re-development of the . This included re-mapping all geologic horizons and identifying development well locations for both producing and injection wells. [The petitioner] proposed first application of horizontal well technology in Nigeria and the wells [the petitioner] proposed were extraordinarily successful. Several of the horizontal wells produced at rate of 7000 BOPD when the average vertical well in the field produced 300 BOPD. The wells were successful because of the accurate geologic mapping and understanding of reservoir performance applied by [the petitioner]. Following the successful re-development of , the approach applied by [the petitioner] was applied in other fields in Nigeria with great success.

stated:

> [The petitioner's] best achievement while I was at was the h development wells for which [the petitioner] proposed using the newly developed in house technology. Based on his proposal, 3 horizontal wells were drilled that, at their peak, produced over 8,000 barrels of oil per day each. This is extraordinary, because conventional wells drilled in the field before this time were producing only about 2,000 barrels of oil per day at their peak. These wells have produced over 9 million barrels each! The project paid out very quickly and the rate of return and [net present value] for the project is world class.

Regarding we are not persuaded that counsel's arguments and the reference letters reflect original contributions of major significance to the field. As cited above, counsel

stated that " and "was developed by As this regulatory criterion specifically requires *original contributions*, we cannot conclude that software or technology that was not developed or created by the petitioner is tantamount to his *original* contributions. It cannot suffice that merely applying the software or technology within the demonstrates an original contribution to the field as a whole.

Moreover, while the letters from and discuss the petitioner's successful mapping that led to the drilling of horizontal oil wells, they reflect the petitioner's involvement with . The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contributions be "of a major significance in the field." While the petitioner may have contributed to the success of production of oil, the petitioner failed to establish that he has made contributions that have impacted or influenced the gas and oil production field as a whole and that are not limited to his contributions and impact within . Although counsel claims on appeal that "[t]he reach of this work is extensive from individual households to entire countries," the record contains no evidence reflecting his impact beyond

We note here that the letter from while generally describing the petitioner as a world leader in deep water developments, fails to provide specific details to explain how his work has currently impacted his field so as to be considered original contributions of major significance. For example, stated that "[The petitioner] has the *potential* to impact any projects he is part of [emphasis added]." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner's work is likely to be influential is not adequate to establish that his work is already recognized as major contributions in the field. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

While those familiar with his work generally describe it as "extraordinary" and "significant," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance outside of This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant to the field as a whole. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[3] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

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[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The phrase "major significance" is not defined in the statute or regulations. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Looking to the applicable dictionary definition, the word "major" is defined as "greater in importance or rank." Webster's New World College Dictionary 867 (4th Ed. 2008). The word "significance" is defined as "importance, consequence, moment." *Id.* at 1334. While these letters discuss the petitioner's personal achievements, there is no evidence that they constitute original contributions of "major significance" in his field.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Finally, we note that the petitioner submitted an article entitled, ' [redacted] published in an AAPG Bulletin. At the end of the article, the authors acknowledge the petitioner for providing them with recent production data for the [redacted] reservoirs. In addition, the petitioner submitted evidence from [redacted] that the article was cited nine times by others. We are not persuaded that a single article that simply acknowledges the petitioner for providing data is sufficient to demonstrate original contributions of major significance. Furthermore, the petitioner's contribution is restricted to the article and does not demonstrate that his data for the [redacted] reservoirs impacted the field as a whole.

Without additional, specific evidence showing that the petitioner's work has been original, influential, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner failed to establish that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the following three presentations:

1. [redacted]
2. [redacted] and
3. [redacted]

In the director's decision, he found that the petitioner's presentations were not articles that were published in professional or major trade publications or other major media. On appeal, counsel argues:

> Each year, the [redacted] makes a company-wide request to its scientists – U.S. and foreign – for abstracts. The selection process is highly competitive; of 300 submissions, only 10 to 15% are selected for presentation. Only the abstract is distributed to forum participants, and these abstracts may be accessed at any time by employees within the company on [redacted] intranet. [The petitioner] was selected three times via this process to present at the annual [redacted] The [redacted] is an internal forum. Approximately 400 earth scientists and professionals from business units across the corporation attend. In addition, select representatives from [redacted] (outside [redacted] are given clearance to attend.

At the outset, counsel failed to provide any documentary evidence supporting her assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of *scholarly articles* in the field, in professional or major trade publications or other major media [emphasis added]." Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the petitioner's presentations do not contain the characteristics of scholarly articles and are more for internal forums within [redacted] than scholarly purposes. As there is no evidence demonstrating that the petitioner's presentations were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly," the petitioner's presentations are insufficient to meet the plain language of the criterion.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the authorship of scholarly articles "in professional or major trade publications or other major media." The petitioner failed to submit any documentary evidence establishing that intranet is a professional or major trade publication or other major media. We are not persuaded that the presentations, which can be accessed only by employees, can be considered as major media.

Accordingly, the petitioner failed to establish that he meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The director found that although has a distinguished reputation, the petitioner failed to establish that he performed in a leading or critical role. On appeal, counsel argues:

> First, serving as a Lead Geologist or Team Leader is a critical role when one considers that millions, perhaps billions of dollars are at stake in the projects Team Leaders for major U.S. oil companies supervise. The evidence of record also indicates that [the petitioner] has exercised substantial control over company and project personnel. Support for this proposition was shown in organizational charts, the duties of positions held by the petitioner, expert testimony and evidence relating to [the petitioner's] service as a Mentor of other geologists and engineers.

A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based mainly on an organizational chart, which appears to have been created by the petitioner, and an affidavit by the petitioner. However, the petitioner failed to submit sufficient documentary evidence supporting these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nonetheless, a review of the organizational chart reflects that the petitioner served in the following capacities:

1.
2.
3. and
4.

In addition, we cite representative examples of the petitioner's recommendation letters here:

stated:

[The petitioner's] current involvement in the [redacted] development project is also a testament to his ability since [redacted] chose him from a team of leading experts to work on this project. This is the one of the five biggest offshore field development projects ever to be undertaken by [redacted] Corporation worldwide.

It is expected that when production from this field starts in 2008, the field will be producing 250,000 barrels of oil per day.

[redacted] stated:

[The petitioner] has been a supervisor and a functional mentor with [redacted] for at least 10 years. In his position as a functional mentor, he has judged and supervised the work of geologists and petroleum engineers on his team. He prepared performance plans and managed direct reports for promotion, and recommended employees for salary pay increases at year end during salary administration reviews.

[The petitioner's] works in the [redacted] in relation to well planning and optimal well placement were all successful. Three of the wells had a combined initial production rate of about 20,000 barrels of oil per day. This was a significant increase relative to similar wells drilled in that area and planned and monitored by others.

[The petitioner's] current position is as a [redacted] This is one of the top 5 projects for [redacted] today, and it is expected to come on stream by June 2008 and produce 250,000 barrels of oil per day at peak production. In order to be chosen for this very important project a geologist must have unique skills. The [redacted] is a mega project involving 5 oil company partners. The logistics of working together on this project are immense. Only those with top skills and vast experience have the wherewithal to work on [redacted]. [The petitioner] has superior skills in oil and gas exploration and development and I have no doubt that [this] will fulfill [redacted] expectations on this project.

[redacted] stated:

Because of his wide-ranging technical skills and his proven track record of success, [the petitioner] was recruited from [redacted] to assist in the mapping of [redacted] for the purpose of determining the company's ownership interest. In his current position, [the petitioner] is responsible for providing high quality seismic interpretation of major oil reservoir intervals

> represented throughout the field. He will use state-of-the-art three dimensional (3D) subsurface seismic mapping and imaging technology to complete the interpretation. From his seismic interpretation, he will develop subsurface time and depth structure grids and maps that will be tied to existing well control in the field area. These maps will form the basis for the determination of stock tank original oil in place (STOOIP) estimates in the reservoir intervals for which he is responsible. [The petitioner] will actively participate in Seismic technical workshops and play a lead role in presenting his interpretation results to international partner companies.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidence from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. In this case, while we agree with the director that has a distinguished reputation, we also agree with the director that the petitioner failed to demonstrate that he has performed in a leading or critical role consistent with the meaning of the plain language of the regulation.

The letters provide only general statements without offering any specific information to establish how the petitioner's roles with were leading or critical. For example, in s letter, we are not persuaded that the petitioner's "judg[ing] and supervis[ing] the work of geologists and petroleum engineers on [the petitioner's] team" is reflective of a leading or critical role for While the petitioner may have performed in various roles for in some asset areas in Nigeria, the petitioner failed to submit documentary evidence that distinguishes his roles from other employees in similar positions in . When compared to as a whole, a multi-billion dollar corporation with over 60,000 employees worldwide,[4] the petitioner's roles fall far short of reflecting that his roles were leading or critical. Furthermore, according to the petitioner's own organizational chart, the petitioner served as a team leader for approximately 10 – 15 employees, served as a functional mentor/supervisor for approximately 18 employees, and served as lead geologist for approximately three units. We are not persuaded that the petitioner's roles can be considered as leading or critical when compared to 60,000 other employees.

We also note that some of the reference letters discuss the petitioner's roles with the project in the terms of the future. For example, stated that "[i]t is *expected* that when production from this field starts in 2008, the field *will* be producing 250,000 barrels of oil per day [emphasis added]." Further, stated that he has "no doubt that [this] *will* fulfill expectations on this project [emphasis added]." In addition, stated that "[the petitioner] *will* use state-of-the-art three dimensional (3D) subsurface seismic mapping [emphasis added]," "[the petitioner] *will* develop subsurface time and depth structure grids and maps [emphasis added]," and "[the petitioner] *will*

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[4] See screenshots from p submitted by the petitioner.

actively participate in Seismic technical workshops [emphasis added]." Given the descriptions of roles with the [redacted] project in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner's accomplishments in his role have yet to be determined. The actual present role of the petitioner has not been established. Rather, the petitioner's references appear to speculate about the petitioner's role at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Moreover, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. Further, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

In this case, the record of proceeding does not establish that the petitioner was responsible for [redacted] success or standing to a degree consistent with the meaning of "leading or critical role" pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Even if we found that the petitioner established that he performed in a leading or critical role for [redacted], which we do not, the plain language of this regulatory criterion requires the petitioner to demonstrate his performance in a critical or leading role with more than one organization. In this case, the record reflects only his role with [redacted].

Accordingly, the petitioner failed to establish that he meets this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

In the director's decision, he found that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." Based on a review of the record proceeding, the petitioner submitted sufficient documentary evidence to meet the plain language of the regulation. As such, we agree with the decision of the director for this criterion.

Accordingly, the petitioner established that he meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been

recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1115. The petitioner established eligibility for two of the criteria, of which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 201(b)(1)(A) of the Act. In this case, the petitioner claims eligibility based entirely on documentary evidence reflecting his employment with [redacted] However, the record fails to reflect any sustained national or international acclaim, and the petitioner has only gained moderate recognition from individuals with whom he has worked at [redacted]. The accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's documentary evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). While the petitioner failed to establish eligibility under the awards, original contributions, and scholarly articles criteria, the petitioner relies on events occurring years prior to the filing of the petition on October 10, 2008, and the petitioner failed to submit sufficient documentary evidence reflecting recent events so as to establish sustained national or international acclaim. For example, under the awards criterion, the most recent award, a [redacted] certificate for the petitioner's contribution in the [redacted], approximately four years prior to the filing of the petition. In addition, under the original contributions criterion, the petitioner based his eligibility, in part, on his involvement with [redacted] Moreover, under the scholarly articles criterion, the most recent presentation, [redacted] occurred at the [redacted] We are not persuaded that the lack of more recent accomplishments or achievements demonstrates sustained national or international acclaim.

While the petitioner failed to establish eligibility under the awards criterion, we note that the petitioner claimed eligibility based on [redacted] which only [redacted] employees are

entitled to receive. Awards won by the petitioner that were limited by his employment status with do not indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than competition limited to a few individuals within USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[5] Likewise, it does not follow that a geologist like the petitioner who has only been internally recognized within the company he works for should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

While the petitioner established eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(iv) (judging), we note that the petitioner based his eligibility on performance reviews of his team members for , as well as technical internal reviews of projects and plans. An evaluation of the significance of the petitioner's judging experience is sanctioned under *Kazarian,* 596 F. 3d at 1121-11. We note that peer review of subordinate employees and internal reviews of work are routine job duties of an individual in the position of a team leader or supervisor. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed the work of other recognized geologists in the field and not limited to individuals within the , we cannot conclude that the petitioner's role as a periodic reviewer is indicative of his sustain international recognition and acclaim in the field.

Furthermore, although the petitioner failed to establish eligibility for the original contributions and critical role criteria, the petitioner based his claims on letters of recommendation, a personal affidavit, and a self-developed organizational chart. The petitioner failed to submit independent, objective, and sufficient supporting evidence reflecting that he "is one of that small percentage who have risen to the very top of the field of endeavor." Furthermore, it must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a

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[5] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

solid basis for a successful extraordinary ability claim. Unusual in its specificity, section 203(b)(1)(A)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation and work are important considerations. Here, the letters of recommendation are from individuals who have worked with him. Even when written by independent experts, letters solicited by an alien in support of an immigrant petition are of less weight than preexisting, independent evidence that one would expect of a geologist who has sustained national or international acclaim.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of his sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). While the petitioner failed to establish eligibility for the critical role criterion, the petitioner based his eligibility on his roles with only one organization. In addition, although the petitioner demonstrated his memberships with [redacted] and [redacted], he failed to demonstrate that he is a member of any associations requiring outstanding achievements of their members. The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.